REMARKS

SUMMARY

In the Office Action dated May 20, 2004, claims 1-7, 9, 10, 22, 24, 25, 29, 30, and 35-37 were rejected under 35 U.S.C. §102(b) and/or 35 U.S.C. § 103(a).

Applicant has amended claims 1, 5, 11, 14, 16, 17, 20, 24 and 35. Claims 4, 7 and 8 have been withdrawn. Accordingly, claims 1-3, 5-6, and 9-37 remain pending. No new matter has been entered. Reconsideration of the pending claims is respectfully requested in light of these amendments and following remarks.

IN THE CLAIMS

Rejections to claims 1-3, 5, 6, 9, 10, 22, 24, 29, 30, and 35-37 under 35 U.S.C. §102(b)

Claims 1-3 are rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 4,205,384 issued to Merz et al. ("*Merz*"). Claim 1 has been amended to more particularly point out the claimed subject matter. Applicant respectfully submits that claim 1, as amended, is patentable over *Merz*. Claims 2-3 are dependant from claim 1 and, by their dependency therefrom, Applicant respectfully submits that claims 2-3 are also patentable.

Claims 5, 6, 9, and 10 are rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 4,488,248 issued to Okada et al. Claim 5 has been amended to incorporate the material of withdrawn claims 7 and 8. Applicant respectfully submits that claim 5, as amended, is patentable over *Okada*. Claims 6, 9, and 10 are dependant from claim 5 and, by their dependency therefrom, Applicant respectfully submits that claims 6, 9, and 10 are also patentable.

Claim 22 is rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 5,085,500 issued to Blesener ("*Blesener*"). Applicant respectfully disagrees. Claim 22 is directed to a particle sizing apparatus comprising:

> a plurality of low pass filter circuits;
> a plurality of discriminators correspondingly coupled to said plurality of low pass filter circuits;
> a microprocessor coupled to said plurality of low pass filter circuits, said microprocessor to facilitate provision of reference particle size information to said plurality of discriminators; and
> an input coupled to said plurality of discriminators to receive an indicia of particle size.

Thus, in claim 22 the microprocessor is coupled to the plurality of low pass filter circuit to facilitate provision of reference particle size information to the plurality of discriminators. In contrast, in *Blesener* the microprocessor does not facilitate provision of reference particle size information to the discriminators. In *Blesener* comparators 104a, 104b and 105 are cited as discriminators. However the reference information provided to the discriminators is provided by signals ε_1, ε_2, and SPS. There is no teaching that these reference inputs are provided by the microprocessor **151** of *Blesener*. Thus, *Blesener* cannot be said to teach a microprocessor coupled to said plurality of low pass filter circuits, said microprocessor to facilitate provision of reference particle size information to said plurality of discriminators.

For at least the reasons discussed above, Applicant respectfully submits that claim 22 is patentable over *Blesener*.

Claim 24 is rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 5,870,190 issued to Unger ("*Unger*"). Claim 24 has been amended to more particularly point out the claimed subject matters. Applicant respectfully submits that claim 24, as amended, is patentable over *Unger*. Claims 25-28 are dependant from claim 24 and, by their dependency therefrom, Applicant respectfully submits that claims 25-28 are also patentable.

Claims 29 and 30 are rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 4,889,815 issued to Bradwell et al. ("*Bradwell*"). Applicant respectfully disagrees. Claim 29 is directed to a particle sizing apparatus comprising:

> an input to receive an indicia of particle size wherein said input receives an analog indicia of particle size;
> a peak detector coupled to said input;
> sample and hold circuitry coupled to said peak detector;
> an analog to digital converter coupled to said sample and hold circuitry; and
> at least one of a microprocessor, a digital signal processor and a microcontroller coupled to said peak detector and said analog to digital converter.

Thus, claim 29 comprises, among other things, an input to receive an indicia of particle size. This differs from the apparatus disclosed in *Bradwell*. The detector in Bradwell is utilized to detect light which has been scattered. The light that is scattered is a result of the light being passed through a sample which has, among other things, whole blood. The detector measures light absorption. This can presumably be used to determine concentrations of particular items in blood. For example, the detector may be used to find concentrations of a particular protein in a sample. However, the photo detectors of *Bradwell* cannot be said to teach "an input to receive **an indicia of particle size**" not concentration. For at least the reasons discussed above, Applicant respectfully submits that claim 29 is patentable over *Bradwell*. Claim 30 is dependant from claim 29 and, by its dependency therefrom, Applicant respectfully submits that claim 30 is also patentable.

Claims 35-37 are rejected under 35 U.S.C. §102(b) as being anticipated by US patent No. 4,009,443 issued to Coulter et al. ("*Coulter*"). Claim 35 has been amended to more particularly point out the claimed subject matter. Applicant respectfully submits that claim 35, as amended, is patentable over *Coulter*. Claims 36-37 are dependant from claim 35 and, by their dependency therefrom, Applicant respectfully submits that claims 36-37 are also patentable.

Rejections to claims 4,7 and 25 under 35 U.S.C. §103

Claims 4, 7 and 25 were rejected under 35 U.S.C. §103.

Claims 4 and 7 have been cancelled rendering the rejections moot.

Claim 25 was rejected as being unpatentable over *Unger* in view of *Garber*. *Garber* is cited for teaching using a nephelometer to measure particle size. Assuming, arguendo, *Garber* so teaches, claim 25 is nevertheless patentable over *Unger* in view of *Garber*. Claim 25 depends from claim 24 which, as previously stated, is patentable over *Marz*. *Garber* does not cure the deficiency of *Unger*. That is, *Garber* does not disclose or suggest a particle sizing apparatus comprising: an input to receive an indicia of particle size wherein said input receives an analog indicia of particle size; an analog to digital converter coupled to said input, said analog to digital converter to provide digital particle size data corresponding to said analog indicia of particle size and to provide peak value indications of said analog indicia of particle size; and at least one of a microprocessor, a digital signal processor and a microcontroller coupled to said analog to digital converter.

Objections to claims 8, 11-21, 23, 26-28 and 31-34

Claim 8 has been cancelled.

Claims 11, 14, 16, 17 and 20 have been rewritten in independent form. Applicant respectfully submits that claims 11, 14, 16, 17 and 20 are in condition for allowance. Claims 12-13, 15, 18-19 and 21 depend from these independent claims and are also in condition for allowance.

Claim 23 depends from claim 22. As discussed above, applicant respectfully submits that claim 22 is allowable and thus, dependant claim 23 is also allowable.

Claims 26-28 depend from claim 24. As discussed above, applicant respectfully submits that claim 24 is allowable and thus, dependant claims 26-28 are also allowable.

Claims 31-34 depend from claim 29. As discussed above, applicant respectfully submits that claim 29 is allowable and thus, dependant claims 31-34 are also allowable.

CONCLUSION

In light of the above amendments and remarks, this application is now in condition for allowance. Claims 1-37 remain currently pending. Early issuance of Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge shortages or credit overpayments to Deposit Account No. 500393. A Fee Transmittal is enclosed in duplicate for fee processing purposes.

Respectfully submitted,
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